

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LEEROY ELIJAH KRAUSE,

Plaintiff,

v.

VANCOUVER POLICE
DEPARTMENT, et al.,

Defendants.

CASE NO. C22-5204 BHS-JRC

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 7, and Plaintiff’s “Status Report,” Dkt. 9, which the Court interprets as objections to the R&R.

Plaintiff Leeroy Elijah Krause alleges that Defendants Vancouver Police Department, Clark County Officer Nicholaas Gillingham, Clark County Detective Travis Brown, Clark County Corporal Ryan Starbuck, Clark County Sergeant Christopher Simmons, and American Medical Response violated his constitutional rights when they responded to a domestic violence report and questioned him without administering *Miranda* warnings, used excessive force against him, falsified evidence against him, and injected him with a substance against his will. *See* Dkt. 1-1. Krause was arrested on

1 | allegations of domestic violence and destruction of a police vehicle. *Id.* at 8–9. He then
2 | moved to proceed in forma pauperis and filed a proposed civil rights complaint, alleging
3 | various constitutional violations against Defendants. *See* Dkt. 1.

4 | Judge Creatura ordered Krause to show cause why the Court should not abstain
5 | from adjudicating his complaint until the resolution of his criminal prosecutions, under
6 | *Younger v. Harris*, 401 U.S. 37 (1971). Dkt. 4. Krause responded, largely repeating the
7 | same allegations contained in his proposed complaint. *See* Dkt. 6. Judge Creatura then
8 | granted Krause’s Motion for Leave to Proceed *in forma pauperis*, Dkt. 1, and
9 | recommended that the Court exercise *Younger* abstention and stay this case pending
10 | resolution of Krause’s underlying criminal cases. Dkt. 7. Krause filed a “Status Report”
11 | informing the Court that his underlying criminal cases have resolved via plea dispositions
12 | and that he seeks to dismiss seven of the nine counts he raised in his proposed complaint.
13 | Dkt. 9. He also provided his updated address. *Id.* The Court interprets Krause’s status
14 | report as timely objections to Judge Creatura’s R&R.

15 | The district judge must determine de novo any part of the magistrate judge’s
16 | disposition that has been properly objected to. The district judge may accept, reject, or
17 | modify the recommended disposition; receive further evidence; or return the matter to the
18 | magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

19 | *Younger* abstention applies if “(1) there is an ongoing state judicial proceeding; (2)
20 | the proceeding implicates important state interests; (3) there is an adequate opportunity in
21 | the state proceedings to raise constitutional challenges; and (4) the requested relief seeks
22 |

1 to enjoin or has the practical effect of enjoining the ongoing state judicial proceeding.”
2 *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (internal quotations omitted).

3 While the Court agrees with the substance of Judge Creatura’s R&R, the
4 circumstances have changed in the month since the R&R was issued. Krause’s
5 underlying criminal cases have resolved via plea agreements and *Younger* abstention is
6 therefore no longer applicable.

7 The Court having considered the R&R, Plaintiff’s Status Report, and the
8 remaining record, does hereby order as follows:

- 9 (1) The Court **DECLINES TO ADOPT** the R&R;
10 (2) The case is **RE-REFERRED** to Judge Creatura; and
11 (3) The Clerk is directed to send copies of this order to Plaintiff at his updated
12 address and to the Honorable J. Richard Creatura.

13 Dated this 8th day of July, 2022.

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16 BENJAMIN H. SETTLE
17 United States District Judge
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